IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 616/2006
(Avtar Singh & Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 07/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Mahesh Bora for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. J.S.Choudhary for the non-petitioner No.2 complainant.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners seek quashing of FIR No. 369 dated 3.11.2005, Police Station, Sumerpur, district Pali for the offences under Sections 465, 467, 471, 120-B IPC and under Setion 3 (1) (v) of the SC/ST (Prevention of Atrocities) Act, 1989 (for short 'the Act' hereinafter).

Heard learned counsel for the petitioners, learned public prosecutor and the counsel appearing for the non-petitioner No.2 complainant. I have carefully gone through the first information report lodged by the complainant non-petitioner No.2 and the police investigation diary.

It is contended by learned counsel for the petitioners that the land for which the dispute is raised and the complainant alleged to have been dispossessed by the petitioners, belongs to the Municipality and therefore, it cannot be said that the land was belonging to the complainant and as such the provisions of Section 3 (1)(v) of the Act are not attracted. It was further contended that in the FIR it has not been averred that as to on what date and from which part of the land, the complainant was alleged to have been dispossessed. It was further contended that the complainant has not come with a specific case that which of the documents were false. Learned counsel submits that there is a survey report by the Municipality and therefore, there arise no question of forging it and lastly it was contended that a no objection certificate was issued by the Executive Officer of Municipality which cannot be said to have been forged.

Learned public prosecutor and the counsel appearing for the non-petitioner No.2 complainant submit that the first information report as also the police investigation diary disclose the cognizable offences and prima-facie after investigation the police came to the conclusion that offences against the present petitioners as noticed above are made out and the Circle Officer of the Rank of Dy. Supdt. of Police recommended for filing of the challan before the competent Court.

From the investigation diary, it appears that

petitioner No.2 Kuldeep and No.3 Junjarsingh are brother-in-laws of petitioner No.1 Avtarsingh. The wife of the petitioner No.1 is Councillor at Municipality Sumerpur. During investigation, the evidence has been collected by the investigating officer that petitioners No. 2 and 3 are resident of Indore (M.P.) and have not been residing at Sumerpur at any time. However, the sister of petitioners NO. 2 and 3 who is wife of petitioner No.1, being a Municipal Councillor has managed for the regularisation of the land in question in the name of her two brothers petitioners No. 2 and 3. From the investigation, it has also come that the complainant was in long possession of the land in dispute from a part of which he has been dispossessed by petitioner No.1. The Executive Officer of the Municipality has categorically made a statement before the Investigating Officer that a no objection certificate, photo copy of which has been filed by the petitioners before the Municipality, has not been signed by him. The outward number shows that by said outward number a letter was dispatched to Municipal Councillor Ramesh and the inward number shows somewhat different, but at any rate no such no objection certificate was either signed and issued or sent to the petitioners. On careful scrutiny of the police investigation diary, it appears that in order to get the land regularized in favour of petitioners No. 2 and 3 who are real brothers of Municipal Councillor and wife of the petitioner No.1, certain documents

have been forged. Even the petitioners came with a case that they have purchased the possession of the land from a person Jawanaram who specifically denied having sold such possession, on the contrary stated that he has not been in possession of any plot then what to talk about selling it, which prima-facie appears to be forged one bears the names of attesting witnesses but there is no signature of such witness which prima-facie shows that no such document was executed and witnessed. The investigation speaks of the evidents as to how a design has been made by the petitioners to grab the land which as per the Investigation Diary was in possession of the complainant. Site map and inspection note prepared by police clearly shows that there is Kacha room (Keluposh) marked 1,2 and 3 from which petitioners dispossessed the complainant and tried to raise a wall which by intervention of police got stopped.

So far as the application of provisions of Section 3 (1) (v) of the Act is concerned, what is required is that a person should be wrongly dispossessed being a member of scheduled caste or scheduled tribe from a land or premises or interfered with the enjoyment of his rights over any land, premises or water. From the investigation diary it appears that the land of which the petitioners No. 2 and 3 seek regularisation from Municipality was in possession of complainant and has been forcibly dispossessed from a part of the land and thus has been

deprived to enjoy his right on the land which was in her possession. In the circumstances, therefore, it is not at all a fit case warranting interference in the investigation or to quash the FIR.

The petition has no force and is therefore, dismissed.

(H.R.PANWAR),J.

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